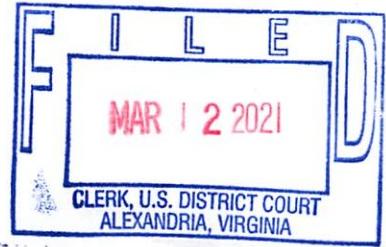


REQUEST FOR COUNSEL  
PETITION FOR A  
WRIT OF ACTUAL INNOCENCE  
TO THE SUPREME COURT OF VIRGINIA



1:21-CV-305

In re: Mark Adamsym Record No. \_\_\_\_\_  
(FULL NAME OF PETITIONER) (TO BE SUPPLIED BY THE CLERK OF THE SUPREME COURT)

(PRISONER NO., IF APPLICABLE)

Wallens Ridge State  
(PETITIONER'S ADDRESS)

Prison 724 Big Stone Gap,

VA 24229

Circuit Court  
Case No.(s) \_\_\_\_\_

Frederick County Circuit

Court

Pursuant to subsection E of § 19.2-327.3 of the Code of Virginia, I,

Tmark Sym

NAME OF PETITIONER

hereby request that this Court appoint counsel to assist me in petitioning this Court for a writ of actual innocence. In support of this request, I state under oath that the following information is true:

1. On 2016 2016, I was convicted in the

DATE

Frederick County Circuit

NAME OF COURT

Court

Circuit Court of the following offense(s):

Description of Offense

Virginia Code

Class of Felony

Plea

MURDER/FELONY

Class 2 Felony

yes

BREAKING AND

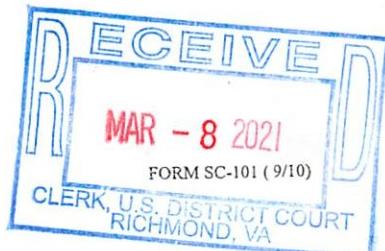
Class 3 Felony

yes

ENTERING

[ ] ATTACHED ADDITIONAL SHEET(S)

I am innocent of the crime(s) for which I was convicted.



3. On 1-14-2011, the above-identified circuit court ordered the  
DATE

Department of Forensic Science to conduct testing on human biological evidence pursuant to § 19.2-327.1 of the Code of Virginia. I have attached to this request an attested copy of that order of the circuit court.

4. I affirm under oath that I am eligible for appointment of counsel and I have attached the completed affidavit for appointment of counsel.

1-23-11

DATE

*M. dyn*

SIGNATURE OF PETITIONER

**FOR NOTARY PUBLIC'S USE ONLY:**

State of ..... [ ] City [ ] County of .....

Acknowledged, subscribed and sworn to before me this ..... day of ....., 20 .....

.....  
NOTARY REGISTRATION NUMBER

.....  
NOTARY PUBLIC  
(My commission expires: ..... )



## PETITION FOR A WRIT OF ACTUAL INNOCENCE

TO THE SUPREME COURT OF VIRGINIA

In re: Mark Adam Sym  
(FULL NAME OF PETITIONER)Record No. \_\_\_\_\_  
(TO BE SUPPLIED BY THE CLERK OF THE SUPREME COURT)

(PRISONER NO., IF APPLICABLE)

(PETITIONER'S ADDRESS)

729 Walkers Ridge  
State Prison Bldg. 3  
94 Pk. Rd. 2427,

Circuit Court \_\_\_\_\_  
Case No.(s) Fredrick County

Pursuant to the provisions of Chapter 19.2 of Title 19.2 of the Code of Virginia, I,

Mark Sym  
NAME OF PETITIONER

hereby petition this Court for a writ of actual innocence. In support of this petition, I state under oath that the following information is true:

1. On 2016 - July 7, I was convicted in theDATE  
Fredrick County Circuit Court of the following offense(s):  
NAME OF COURT

Description of Offense	Virginia Code	Class of Felony	Plea
<u>Murder</u>	<u>19.2-2(a)</u>	<u>Class 1</u>	<u>Yes</u>
<u>Breath of end</u>	<u>19.2</u>	<u>Class 3</u>	<u>Yes</u>

[ ] ATTACHED ADDITIONAL SHEET(S)

- (2) I am innocent of the crime(s) for which I was convicted.

3. My claim of innocence is based upon the following human biological evidence and scientific testing:

Milk was taken from the slayin

D. and D. in the fatal death was composed of meat  
Not milk, when I intoxicated on time of offense. [ ] ATTACHED ADDITIONAL SHEET(S)

4. Check one:

This evidence was not known or available to either me or my attorney at the time the conviction became final in the circuit court.

This evidence was known at the time the conviction became final in the circuit court, but was not tested because ~~I was not given the DNA report~~ [ ] ATTACHED ADDITIONAL SHEET(S)

5. This evidence was tested pursuant to the provisions of Virginia Code § 19.2-327.1 and the results were obtained by me or my attorney on Never Never. DATE

This petition is filed within sixty days of obtaining those results and those test results are filed with this petition. Attached is a copy of the notice of the test results from the Department of Forensic Science.

6. The scientific evidence described in paragraph number 4 above will prove that no rational trier of fact could have found me to be guilty beyond a reasonable doubt of the charge described above because

I did not kill James Westfall with I took part in

a Zulu slaying. Slight - the lower part of the body

[ ] ATTACHED ADDITIONAL SHEET(S)

7. Check box if applicable and provide any additional information.

My conviction became final after June 30, 1996, and the scientific evidence described in paragraph number 4 above was not available for testing under Virginia Code § 9.1-1104 because:

it was shown in a report that we, real art Prestru

report but did not show pictures of the fingerprints and pictures of the

[ ] ATTACHED ADDITIONAL SHEET(S)

blood on clothing

8. This petition contains all relevant allegations of fact known to me at this time and all previous records, applications, petitions, appeals, and dispositions relating to this matter are attached. In support of this petition, the following documents are attached:

*This is an affidavit.*

[ ] ATTACHED ADDITIONAL SHEET(S)

9. I understand that this petition must contain all relevant allegations of fact that are known to me at this time. I understand that it must include all previous records, applications, petitions, appeals, and their dispositions related to this conviction, as well as a copy of any test results of the scientific evidence described above. I understand that if this petition is not complete, this Court may dismiss the petition or return the petition to me pending the completion of such form. I understand that I am responsible for all statements contained in this petition. I understand that any knowingly or willfully made false statement shall be a ground for prosecution and conviction of perjury as provided in Virginia Code § 18.2-434. I understand that this Court shall not accept this petition unless it is accompanied by a duly executed return of service verifying that a copy of this petition and all attachments have been served on the attorney for the Commonwealth of the jurisdiction where the conviction occurred and on the Attorney General of Virginia.

10. Check box if claiming in forma pauperis status and seeking to file this petition without payment of fees.

I claim in forma pauperis status and I request that this Court accept this petition without the payment of filing fees. I affirm under oath that I am eligible for in forma pauperis status and I have attached the completed affidavit to this effect.

Based on the above, I petition this Court pursuant to the provisions of Chapter 19.2 of Title 19.2 of the Code of Virginia for a writ of actual innocence.

1-23-21

DATE

*M. J. Dym*

SIGNATURE OF PETITIONER

FOR NOTARY PUBLIC'S USE ONLY:

State of ..... [ ] City [ ] County of .....

Acknowledged, subscribed and sworn to before me this ..... day of .....

.....  
NOTARY REGISTRATION NUMBER

NOTARY PUBLIC  
(My commission expires: .....

1:21-CV-305

PROOF OF SERVICE AND RETURN OF SERVICE/ACCEPTANCE OF SERVICE

PETITION FOR A WRIT OF ACTUAL INNOCENCE

TO THE SUPREME COURT OF VIRGINIA

Pursuant to the provisions of Chapter 19.2 of Title 19.2 of the Code of Virginia, I,



*Mark Sym*

NAME OF PETITIONER AND PRISONER NO. (if applicable)

am petitioning the Supreme Court of Virginia for a writ of actual innocence. A true copy of this petition shall be served upon:

(CHECK ONE BOX)

The attorney for the Commonwealth for *Fredrick County* at  
*Winchester Va NOrth St* (CITY OR COUNTY)

ADDRESS

The Attorney General of Virginia at  
The Office of the Attorney General  
900 East Main Street  
Richmond, Virginia 23219

with a copy of the following documents attached:

*A Copy of Victim / Innocence*

ATTACHED ADDITIONAL SHEET(S)

*1-23-71*

DATE

SIGNATURE OF PETITIONER

*m. sym*

Subscribed and sworn to/affirmed before me on this date by the above-named person.

DATE

CLERK  DEPUTY

FOR NOTARY PUBLIC'S USE ONLY:

State of \_\_\_\_\_  City  County of \_\_\_\_\_

Acknowledged, subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_  
by \_\_\_\_\_

NOTARY REGISTRATION NUMBER

NOTARY PUBLIC

(My commission expires: \_\_\_\_\_)

## **PROOF OF SERVICE/ACCEPTANCE OF SERVICE**

## **RETURN OF SERVICE BY SHERIFF**

I certify that I personally served the person indicated with the PETITION FOR A WRIT OF ACTUAL  
INNOCENCE and the other documents described on the date below.

DATE \_\_\_\_\_ Sheriff  
By \_\_\_\_\_ Deputy Sheriff  
CITY OR COUNTY

## **RETURN OF SERVICE BY PRIVATE PROCESS SERVER**

I, the undersigned swear/affirm that:

- 1 I am a private process server (list name, address and telephone number below).

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2. I am not a party to, or otherwise interested in, the subject matter in controversy in this case.
  3. I am eighteen years of age or older.
  4. I personally served the person indicated with the PETITION FOR A WRIT OF ACTUAL INNOCENCE and the other documents described.

— Date and time of service: \_\_\_\_\_

— Place of service: \_\_\_\_\_ STREET ADDRESS, CITY AND STATE \_\_\_\_\_

**STREET ADDRESS, CITY AND STATE**

---

**DATE** \_\_\_\_\_ **SIGNATURE** \_\_\_\_\_

Name (Print or Type) \_\_\_\_\_

**FOR NOTARY PUBLIC'S USE ONLY:**

**State of** \_\_\_\_\_ **[ ] City [ ] County of** \_\_\_\_\_

Acknowledged, subscribed and sworn to before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_

by \_\_\_\_\_

---

**NOTARY REGISTRATION NUMBER**

**NOTARY PUBLIC**  
(My commission expires: \_\_\_\_\_)

**ACCEPTANCE OF SERVICE OF PROCESS**

I, the undersigned party named below, swear under oath/affirm that I received a copy of the PETITION FOR A WRIT OF ACTUAL INNOCENCE and the other attached documents described on this date. I understand that my receipt of these copies and my signature below constitute the acceptance of service of process of these copies.

---

1-23-21

DATE

SIGNATURE

M. dyne

Mark Sym  
a <sup>du</sup>m

NAME

A petition for a writ of actual innocence may be filed with the Supreme Court of Virginia by someone who was either:

- (i) convicted of a felony upon a plea of not guilty;
- (ii) sentenced to death, regardless of plea; or
- (iii) convicted of a Class 1 felony, a Class 2 felony, or any felony for which the maximum penalty is imprisonment for life, regardless of plea.

Based on the petition for a writ of actual innocence, the Supreme Court may direct the circuit court that convicted the petitioner to conduct further hearings and the Supreme Court may hold a hearing.

The Supreme Court may dismiss the petition for failure to state a claim or it may identify grounds upon which relief shall be granted to the petitioner. If the Supreme Court holds a hearing, it shall then (i) dismiss the petition for failure to establish allegations sufficient to justify the issuance of a writ of actual innocence, or (ii) find, based upon clear and convincing evidence, that the petitioner has proven all of the allegations contained in paragraphs 3, 5, 6, 7 and 8 of the PETITION FOR A WRIT OF ACTUAL INNOCENCE because no rational trier of fact could have found proof of guilt beyond a reasonable doubt, and vacate the conviction. If the Supreme Court finds that no rational trier of fact could have found sufficient evidence beyond a reasonable doubt as to one or more elements of the offense for which the petitioner was convicted, but the Court finds that there remains in the original trial record evidence sufficient to find the petitioner guilty beyond a reasonable doubt of a lesser included offense, the court shall modify the conviction accordingly and remand the case to the circuit court for resentencing.

The burden of proof in a proceeding for a writ of actual innocence shall be upon you, the petitioner.

3. Can I have counsel appointed for a petition for a writ of actual innocence?

The Supreme Court will not consider any request for appointment of counsel until you have filed the form entitled REQUEST FOR COUNSEL — PETITION FOR A WRIT OF ACTUAL INNOCENCE and unless you have completed the in forma pauperis affidavit attached to the request for appointment of counsel. As part of this request, you must attach to that request an attested copy of the order of the circuit court ordering that testing of human biological evidence be performed by the Department of Forensic Science pursuant to Virginia Code § 19.2-327.1.

4. What must be included with a petition for a writ of actual innocence?

Your petition must contain all relevant allegations of facts that are known to you at the time you prepare your petition and file it. Your petition must include all previous records, applications, petitions, appeals, and their dispositions related to this conviction, as well as a copy of any test results of the scientific evidence described above. Your petition must be filed with the Supreme Court of Virginia within sixty days of you or your counsel obtaining the results of the scientific testing which are the basis of your petition.

5. What must be done to file a petition for a writ of actual innocence?

If your petition is not complete, the Supreme Court may dismiss the petition or return the petition to you pending the completion of such petition. The Supreme Court shall not accept your petition unless it is accompanied by either a duly executed return of service verifying that a copy of this petition and all attachments have been served on the attorney for the Commonwealth of the jurisdiction where the conviction occurred and a duly executed return of service verifying that a copy of this petition and all attachments have been served on the Attorney General of Virginia or an acceptance of service signed by either or both the attorney for the Commonwealth and the Attorney General or a combination of the two.

6. What are the fees to file this petition?

The Supreme Court cannot accept and file your petition unless you submit either a check (or money order) for \$ 50 or else complete the affidavit (attached to the PETITION FOR A WRIT OF ACTUAL INNOCENCE) affirming that you cannot afford the filing fee.

7. Your responsibility for what is said in your PETITION FOR A WRIT OF ACTUAL INNOCENCE.

You are responsible for all statements contained in this petition. Any knowingly or willfully made false statement shall be a ground for prosecution and conviction of perjury as provided for in Virginia Code § 18.2-434.